

Application No. 10/807,402  
AMENDMENT dated January 14, 2009  
Reply to Office Action of October 14, 2008

**REMARKS**

Claims 8, 14, and 24 have been amended to address the § 112 rejections. Claims 2 and 15-17 had previously been canceled. Claims 28 and 29 had been previously withdrawn. Claims 30 and 31 are new. Thus, claims 1, 4-5, 7-14, 19-21, 23-23, 30 and 31 are currently pending in this application.

Claims 8, 14, and 24 stand rejected under 35 U.S.C. § 112, first paragraph and second paragraph. Claims 8, 14 and 24 have been amended to address these rejections. With regard to claim 14, it is respectfully submitted that a vacuum pressure applied from the direction of the dough transport mechanism would be effective to entrain the dough into the transport mechanism. Claims 1 and 4 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 3,541,946 to Johnston. The Applicants respectfully traverse this rejection.

Regarding claim 1, the Johnston reference fails to disclose a method of making a filled dough product comprising an extrusion head including “an outer horn having an outer horn passageway extending a first axial length from an outer horn inlet to an outer horn outlet, wherein the outer horn passageway tapers inwardly in cross sectional shape along the entire first axial length” as recited in claim 1.

The Office Action now alleges that this is disclosed in Figures 3-5 of Johnston. It is respectfully submitted that this is not disclosed in Figures 3-5 of Johnston. The Johnston reference discloses an outer horn that does not taper adjacent its outlet as is depicted in Figures 2-5 and 12. Instead, there is a non-tapered segment immediately adjacent the outlet. This portion of the extrusion head is discussed in the last paragraph of the specification (Col. 4, lines 63-75) and is termed the “land” portion of the channel.

As the applied reference does not disclose all of the elements of the present claim, it is respectfully requested that the rejection as it applies to claim 1, and the rejection to claim 4 dependent therefrom, be withdrawn.

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Claims 5 and 7 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Johnston in view of U.S. Patent No. 5,686,128 to Tracy et al. Claims 9-10 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Johnston in view of U.S. Patent Application Publication No. US 2002/0122858 A1 to Baras. Claims 11-13, 19, 23, and 25-27 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Johnston, in view of Baras, and further in view of U.S. Patent No. 4,659,580 to Svengren. Claim 8 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Johnston, in view of U.S. Patent No. 6,001,400 to Burger. Claim 24 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Johnston, in view of Baras and Svengren, and further in view of Burger. Claim 21 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Johnston, in view of Baras and Svengren, and further in view of U.S. Patent No. 4,332,538 to Campbell. Claim 14 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Johnston, in view of Baras and Svengren, and further in view of U.S. Patent No. 2,246,758 to Roth. Claim 20 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Johnston, in view of Baras and Svengren, and further in view of Tracy et al. The Applicants respectfully traverse these rejections.

In addition to the above comments as they apply to the Johnston reference, it is submitted that the Johnston reference, which is cited in each of the above obviousness rejections, teaches away from the present claims. A prior art reference must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention. *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), cert. denied, 469 U.S. 851 (1984); MPEP 2141.02, VI.

The present application is directed to producing a co-extruded product wherein the outer dough layer has reduced or eliminated opacity and the occurrence of sheared dough is also reduced or eliminated. Conversely, the disclosure of Johnston is directed to increasing shearing action and presents means for increasing the shear imparted on the dough. Johnston explicitly states:

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"The rotating screw 21 preferably has a compression ratio of preferably 3 or 4 to 1 and the compression of the moist cereal mixture increases the heat transferred to the mixture and subjects the dough being formed to vigorous working at high rates of shear." (Col. 1, lines 62-66).

"Also a breaker plate 24 having a plurality of holes one-eighth inch in diameter may be mounted behind the screen pack 23 to increase the shearing action and further increase the back pressure." (Col. 1, lines 72-75).

"... it permits joining of the two fluid streams which are under high pressure while one of the streams is undergoing violent expansion." (Col. 4, lines 20-22).

As the Johnston reference discloses a method that employs imparting high rates of shear and using extreme pressure on the dough, it is respectfully submitted that the disclosure of Johnston leads away from the presently claimed methods.

With regard to claim 11, Johnston fails to disclose or suggest all of the features of the claims for the same reasons as stated in reference to claim 1. Further, the references of Baras and Svengren fail to disclose the features missing from Johnston. Baras teaches a method of making bagel products, however as indicated in the Office Action, "Baras simply did not describe the extrusion means in any detail" (Office Action, page 7). Svengren is applied in the Office Action for its disclosure of horizontal coextrusion, dough containers, and feeding mechanisms. However, the disclosed extrusion head has a cylindrical extension at the outer horn outlet, similar to that of Johnston, and therefore fails to cure the deficiencies of Johnston. Therefore, the Applicants respectfully request that this rejection be withdrawn.

In view of the above discussion as it applies to claim 1, from which claims 5 and 7-10 depend, and claim 11, from which claims 12-14, 19-21, and 23-27 depend, it is respectfully submitted that these claims are allowable as well.

In view of the foregoing comments, reconsideration and allowance of the pending claims is respectfully requested.

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The Commissioner is hereby authorized to charge any additional fees which may be required with respect to this communication, or credit any overpayment, to Deposit Account No. 06-1135.

Respectfully submitted,  
FITCH, EVEN, TABIN & FLANNERY

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